(35068)

IN THE

Supreme Court of the United States

October Term, 1956

No. 30

GERALD D. NELSON, GERALDINE D. N. ACKER and GERTRUDE N. FITZPATRICK, as Successor Trustees under the Will of William Nelson, Deceased, and HELEN D. MOLLER,

Appellants,

vs.

THE CITY OF NEW YORK,

Appellee.

On Appeal from the Court of Appeals of the State of New York

APPELLEE'S BRIEF

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Constitutional and Statutory Provisions

Appellants invoke the relevant portions of the Fourteenth Amendment to the Constitution of the United States, which are set forth at page 2 of their brief.

This appeal involves the foreclosure by the City of New York of two parcels of real estate formerly owned by appellants. The foreclosure proceedings were instituted by

the City of New York pursuant to Title D of Chapter 17 of the Administrative Code of the City of New York. The appendix to appellants' brief sets forth that statute as it existed at the time of the foreclosures. We annex as an appendix to this brief §D17-25.0, which was added to the Administrative Code by Chapter 481 of the Laws of 1956, effective April 9, 1956, subsequent to the decision of the New York Court of Appeals and the filing of the appeal herein. The enactment of that statute is relevant to our contention that the instant appeal is moot with respect to one of the two parcels involved.

Questions Presented

The questions sought to be raised by appellants relate to the validity of the in rem foreclosure by the City of New York, pursuant to statutory authorization, against two parcels of property formerly owned by the appellants.

The appellants urge that the in rem foreclosure statute (Title D, Chapter 17, of the Administrative Code of the City of New York) and the acquisition of title to the two parcels by the City pursuant to the statute violated both the "due process" and "equal protection of the laws" provisions of the Fourteenth Amendment.

We believe that the appeal is moot with respect to one of the parcels involved (the Powell Street property) because of the passage of Laws of 1956, Chapter 481, by the New York State Legislature. That statute took effect on April 9, 1956, subsequent to the decision herein of the New York Court of Appeals and the filing of the appeal to this Court. The statute provides for a method of redemption applicable to the Powell Street property. The appellants

have made application therefor, and the City has indicated its willingness to reconvey this property to appellants upon payment of unpaid tax arrears with interest and costs of foreclosure as provided by statute. The appellants have, however, requested that action on their application by the City be deferred pending the decision of the instant appeal.

With respect to the other parcel involved (the 45th Avenue property) the redemption statute (L. 1956, ch. 481) is not applicable since the property had been sold by the City prior to the passage of the statute.

Statement of Case

Since 1933, Gerald D. Nelson has been the active or managing Trustee of the Estate of William Nelson, maintaining an office at 36 West 44th Street, Manhattan, where the records of the Trust were kept and from which the various mortgages and real properties belonging to the Trust were managed. Among such properties were the 45th Avenue property and the Powell Street property, subsequently foreclosed by The City of New York by action in rem. The owners of such properties were described on the records of the City Treasurer as "Est. William Nelson, 36 West 44th Street, New York 18, N. Y." (R. 8-9). This was the address supplied by the appellants to the City Treasurer (R. 73).

It was Mr. Nelson's custom to spend several hours a week at this office on the affairs of the Trust. At such visits, the bookkeeper would bring to Mr. Nelson's attention and have ready for payment "all bills, including bills for real estate taxes and water charges on the various trust properties". Beginning about 1945 the bookkeeper embarked upon a program of embezzlement. This book-

keeper had been regularly presenting to Mr. Nelson for payment all of the real estate tax bills for the years from 1945 through 1952. Mr. Nelson claimed that not only was he unaware of his bookkeeper's fraud upon the estate, but believed that "all charges against their property had been paid and were regularly being paid" (R. 9-10).

However, all tax bills on the 45th Avenue and Powell Street properties were presented to Mr. Nelson, and each bill for every year from 1945 through 1952 had a notice that taxes were in arrears printed clearly on the face of the tax bill. The word "arrears" included water charges. Payments were due the City of New York October 1st and April 1st of each year, so that twice a year, for six years, when Mr. Nelson wrote out the checks for the payment of the real estate taxes, there was thus called to his attention the presence of arrears on the 45th Avenue and Powell Street properties. It was incumbent upon Mr. Nelson, as managing trustee of the estate, to have at least looked at the tax bills, and a simple question put to the bookkeeper as to why there should be a notation of arrears undoubtedly would have revealed the fraud then being perpetrated (R. 80-81).

Mr. Nelson failed to have made an independent audit of the accounts of his trusted bookkeeper or an independent tax search of the properties in the trust. This was especially strange in the face of Mr. Nelson's statement (R. 13) that he carried on a systematic and regular program of maintenance and repair through a reputable real estate management firm in Brooklyn (R. 82). The City charged, without denial, that these failures on the part of Mr. Nelson constituted such negligence as permitted the 45th Avenue and Powell Street properties to become tax delinquent for at least four years (R. 82).

Such was the situation when, on May 20, 1950, the City of New York, pursuant to Title D of Chapter 17 of the New York City Administrative Code, commenced a foreclosure action in rem against 294 tax-delinquent properties located in Sections 1 and 2 of the Borough of Queens. Under Title D, the Treasurer of the City of New York could select the tax section to be foreclosed but when that was done, all discretion was taken from him. He had no power to distinguish between improved and vacant properties or large and small amounts of tax arrears. It was mandatory that he include in the List of Delinquent Taxes *all* parcels four or more years delinquent in the section selected. The 45th Avenue property of the appellants, therefore, was included in the List since it was located in Section 1 and was tax-delinquent for four or more years. The tax liens which had accrued against this property were the water charges which had become liens for the years from 1945-1950, inclusive, and the real estate taxes which had become liens for the second half of the tax year 1948/49 (R. 73-74). (These totalled $320.20.)

Had the Treasurer been desirous of excluding this property from foreclosure, he could not have done so because the appellants had not placed themselves within one of the four specific statutory reasons for exclusion set forth in Section D17-5.0 of the Administrative Code.* The disparity between the amount of unpaid taxes and the value

* The four statutory reasons for exclusion are: (1) That a question has been raised as to the validity of the tax lien on the parcel; (2) that before the effective date of the statute the City Treasurer had agreed to accept payment of delinquent taxes in instalments and the payment of such instalments is not in default; (3) that an instalment agreement has been entered into by the Treasurer after the effective date of the statute, and there is no default by the taxpayer; (4) that within two years prior to the filing of the list of delinquent taxes the City has sold a tax lien on the property the enforcement of which has not been completed.

of the property was in itself no reason to exclude it from the action, for the Legislature did not give the Treasurer this power of selection. In fact, the Legislature of the State of New York, when it enacted Title D in 1948, provided in Section D17-2.0 thereof that the in rem foreclosure method of collection was to be in addition to any other existing remedies and, further, that actions to foreclose tax liens pursuant to Title A of the Administrative Code (§§415(1)-7.0—415(1)-53.3 [Williams Ed., pp. 496-517]) could be discontinued and new in rem actions started under Title D. Conditions had proved the necessity for a summary type of tax collection unencumbered by the many intricacies of the mortgage foreclosure type of actions which were time-consuming, expensive and outmoded (R. 82, 88, 90).

On December 17, 1951, the City of New York, pursuant to the same statute, commenced a similar in rem action against 1704 parcels of tax-delinquent properties located in Sections 10, 11, 12 and 13 of the Borough of Brooklyn. Properly included in the List of Delinquent Taxes was the Powell Street property of the appellants since it was located in Section 12 and was tax-delinquent for four or more years. The tax liens which had accrued against this property were water charges which had become liens for the years from 1945-1951 inclusive and the real estate taxes which had become liens for the second half of the tax year 1948/49 (R. 72). (These amounted to $2,681.)

In both in rem actions, the City did not and could not seek personal money judgments. The City duly complied with the in rem jurisdictional requirements as to the filing of the List of Delinquent Taxes and the posting and publication of the Public Notice of Foreclosure (R.

73-74). The appellants admitted that with respect to each of their properties the City mailed a copy of the Public Notice of Foreclosure to the office maintained by them at "36 West 44th Street, New York 18, N. Y." and that such notices were received by their duly authorized agent (R. 9, 10, 74). Appellants' claim that they were deprived of actual notice of the in rem foreclosure action could not be attributed to any failure on the part of The City of New York to comply with the notice provisions of Title D but to their misplaced confidence in their trusted bookkeeper who was their agent and who concealed such notices from Mr. Nelson.

Appellants failed to pay the delinquent tax liens prior to the last date fixed for payment and never interposed any answer within the required time limits. They were in complete default. Consequently, judgments of foreclosure dispensing with the necessity of a judicial sale and directing the conveyance of the fee title to the City were entered. The City became vested with title to the 45th Avenue and Powell Street properties on August 22, 1950 and May 19, 1952, respectively. The 45th Avenue property was subsequently sold in accordance with the New York City Charter at public auction and conveyed to Mr. John Balog on April 19, 1951 (R. 93). The City still retains title and is in possession of the Powell Street property (R. 73-74).

The City prepared tax bills for the years 1950/1951 and 1951/1952 on the 45th Avenue property. Both of these bills called attention to the tax arrears on the property. The first bill for the 1950/1951 taxes (R. 36a), prepared in July 1950 along with 300,000 others, indicates that it was in arrears as of June 30, 1950. This delinquency was once again available for Mr. Nelson's attention when he

made the payment for the second half of the 1950/1951 taxes in April, 1951. When the bookkeeper presented the following year's bill, 1951/1952 (R. 38a), to Mr. Nelson for payment, there was again revealed on the face of the tax bill the fact that there were still arrears as of June 30, 1951. Overlooking this distinct notice that something was wrong with the tax status of the 45th Avenue property, Mr. Nelson again, in April of 1952, paid the second half of the 1951/1952 taxes (R. 80).

This resulted in duplicate payments being made by the appellants and John Balog, who had purchased the property from the City after the in rem foreclosure. Such duplicate payments were called to appellants' attention by two notices from the City of New York advising them to investigate the matter and apply for a refund (R. 94-95). These notices were received by appellants five months before the City had ever started the in rem action against the Powell Street property and nine months before the City had acquired its title (R. 83). Thus, appellants were apprised by sufficient notice that something was wrong with the tax status of their properties. The City of New York in no way contributed to the illegal acts of appellants' bookkeeper.

Opinions Below

On March 16, 1954, the appellants moved to open their defaults in payment and pleading. The Court of first instance denied the motions in all respects and pointed out that it was precluded under the statute as construed by the highest Court of the State of New York from extending the time of the appellants to answer or make payment. It found that the City had fully complied with the

statutory requirements and that the plight of the appellants was attributable to their misplaced confidence in their trusted bookkeeper and agent, who had concealed all notices received from The City of New York in order to cover up his defalcations (R. 100).

The orders of the Court of first instance were affirmed by the Appellate Division of the New York Supreme Court (R. 105) (284 App. Div. 894, 134 N. Y. S. 2d 597) and subsequently by the New York Court of Appeals (R. 108) (309 N. Y. 94, 96; 127 N. E. 2d 827). The latter Court in its opinion stated that it was without power to afford relief and that relief could only be through an act of the New York State Legislature. Subsequently, the remittitur was amended to reflect that there were presented and necessarily passed upon questions under the Constitution of the United States (R. 110).

Events Since Decision of the Court of Appeals

Subsequent to the decision of the Court of Appeals and the filing of a notice of appeal to this Court, the Legislature of the State of New York enacted Chapter 481 of the Laws of 1956, effective on April 9, 1956, which added D17-25.0 to Title D of Chapter 17 of the Administrative Code. This statute provides for the reconveyance by the City of New York of property theretofore acquired through foreclosure by action in rem to the owners of record on the day when the City commenced its foreclosure actions. Application for such reconveyance, in the case of properties already foreclosed, had to be made within 60 days after the statute took effect. The statute is applicable only to properties which the City has not sold after acquiring

title, and further provides that reconveyance be conditioned upon payment by the former owner of tax arrears, interest thereon and costs of foreclosure. The appellants, pursuant to this statute, on April 25, 1956, applied for the reconveyance of the title to the Powell Street property. By a letter dated September 17, 1956, the Director of Real Estate of the Board of Estimate indicated his willingness to recommend approval of appellants' application, and requested the appellants to forward the sum of $15,711.68, representing the amount of unpaid tax arrears, interest, and the costs of the foreclosure. By letter dated September 19, 1956, the appellants stated that they would promptly pay as requested in the event of an affirmance by this Court of their appeal and requested the City to withhold any action on their application pending a decision by this Court. Copies of these letters will be available for this Court upon the argument of this appeal.

Summary of Argument

The in rem foreclosure statute here involved satisfies the requirements of due process since it affords ample opportunity to an owner to protect his interest in his property. No question of notice under the statute is presented since bills for unpaid taxes as well as notices of the foreclosure suits were sent to the address supplied by the appellants and were admittedly received by their employee who wrongfully concealed the notices from them. The difficulties of the appellants arose not by reason of the statutory provisions but because of the defalcations of their employee. Under those circumstances, the loss suffered by the appellants may not be validly invoked as the basis for an attack upon the statute.

The fact that the City had an alternative remedy by way of a foreclosure procedure substantially *in personam*, which might have resulted in an enhancement of the appellants' rights, imposed no obligation upon the City to use that method in the collection of taxes. Experience had shown that the old method was cumbersome and ineffective as a means of collecting taxes. For that reason the Legislature had enacted the in rem foreclosure statute and had expressly provided that the City could pursue that method regardless of any other course open to it. Appellants have no constitutional right to insist upon a particular method of tax enforcement.

ARGUMENT

The in rem foreclosure statute and its application herein constitute a valid exercise of the sovereign power and do not violate due process or equal protection of the laws within the intendment of the Fourteenth Amendment. The existence of an alternative remedy which had proved inadequate imposed no duty on the City to proceed in that manner so as to enhance appellants' rights.

1. The in rem foreclosure statute satisfies the requirements of due process.

The constitutionality of the in rem foreclosure statute here involved (Title D, Chapter 17, of the Administrative Code) would appear to be settled by the decision of this Court in *Winona & St. Peter Land Co.* v. *Minnesota*, 159 U. S. 526 (1895), and see also *City of New Rochelle* v. *Echo Bay Waterfront Corp.*, 294 N. Y. 678, 60 N. E. 2d 838 (1945), cert. den. 326 U. S. 720 (1945).

The *Winona* case involved a Minnesota statute described as "strikingly similar to that set forth in Title 3 [of Article VII-A of the New York State Tax Law]" (*New Rochelle* opinion, 268 App. Div. 182, 186), which appellants concede (Brief, p. 9) is in turn similar to Title D of Chapter 17 of the Administrative Code here involved. This Court described in detail the method for the collection of taxes authorized by the statute (159 U. S., at pp. 535-536) and, in disposing of the plaintiff's contention that the statute infringed upon the due process provision of the Fourteenth Amendment, said (*id.*, at pp. 537-538):

> "That the notice is not personal but by publication is not sufficient to vitiate it. Where, as here, the statute prescribes the court in which and the time at which the various steps in the collection proceedings shall be taken a notice by publication to all parties interested to appear and defend is suitable and one that sufficiently answers the demand of due process of law. *State Railroad Tax Cases,* 92 U. S. 575, 609; *Hagar* v. *Reclamation District,* 111 U. S. 701, 710; *Kentucky Railroad Tax Cases,* 115 U. S. 321; *Lent* v. *Tillson,* 140 U. S. 316, 328; *Pittsburg, Cincinnati &c. Railway* v. *Backus;* 154 U. S. 421. It cannot be doubted under these various authorities that in respect to the collection of these taxes ample provision is made for notice, and, therefore, that it cannot be adjudged that the owner is for want thereof deprived of his property without due process of law."

Other cases in which this Court has upheld the validity of state statutes providing for the enforcement of real property taxes by in rem procedure are *Longyear* v. *Toolan,* 209 U. S. 414 (1908); *Leigh* v. *Green,* 193 U. S. 79, 89-91 (1904), and *King* v. *Mullins,* 171 U. S. 404, 429-431 (1898). See also *Horne* v. *Ocala,* 143 Fla. 108, 196 So. 441 (1940), appeal dismissed for want of a substantial federal question, 311 U. S. 608 (1940).

2. The appellants' authorized agent admittedly received notice of the foreclosure actions. Hence, the question of adequacy of notice is not here involved.

While the in rem foreclosure statute (Title D, Chapter 17, of the Administrative Code) provides for notice by publication, no question of adequate notice under the statutory provisions is here involved as it was, for example, in *Mullane* v. *Central Hanover Trust Company*, 339 U. S. 306 (1950), or *Covey* v. *Town of Somers*, 351 U. S. 141 (1956), cited by appellants (Brief, pp. 15-16). Here, the City mailed the tax bills to "Est. William Nelson, 36 West 44th Street, New York 18, N. Y.", the address supplied by appellants, and those bills admittedly reached that destination and indicated on their face that there were tax arrears on each of the properties during the entire period here involved (R. 9-10). Moreover, when the two foreclosure actions were commenced, notices thereof were mailed to the appellants at the same address and also arrived at their destination (R. 9, 10, 74). Those notices contained the statement that unless the owner made payment or interposed an answer, as provided by statute, "the ownership of said property will in due course pass to the City of New York as provided by the Administrative Code of the City of New York" (Administrative Code, §D17-6.0).

The failure of the appellants to know about the tax arrears or the foreclosures was due not to the inadequacy of the notices supplied by the City but to the misfeasance of their bookkeeper. The appellants urge (Brief, pp. 13-14) that their failure to pay the relatively small taxes here involved should have been warning to the City that they

would not receive notice of the foreclosure suits. We think this contention will not withstand analysis.

The address to which notice was mailed was the only one supplied by appellants and mail thus addressed reached its destination. The City was no more under a duty to investigate the facts and circumstances leading to appellants' default than it would be with respect to defaults on any of the numerous tax parcels in the City. The contention that the City was placed on notice that appellants were unaware of the tax delinquencies and was therefore bound to take further steps before foreclosing because the amount of tax arrears was small, would place a crippling burden on the City if it were applied generally. It would mean that the City could safely proceed to foreclose if the tax delinquency was a large one but must proceed at its peril if it were a small one and would render the in rem foreclosure statute ineffective as to "small" delinquencies, however that term were to be defined.

3. The existence of an alternative method of tax enforcement which had proved inadequate imposed no obligation on the City to use that method.

The appellants contend that the City had an alternative method of collecting for unpaid taxes, *i.e.*, by transfer of tax lien (Title A, Chapter 17, Admin. Code); that the use of that method would have resulted in the payment of the taxes or, if there was a foreclosure, in the creation of a surplus from the sale of the 45th Avenue property which would have accrued to appellants' credit; and that consequently the City had no right to resort to the in rem foreclosure method. This contention requires a brief discussion as to the reasons underlying the enactment of Title D, Chapter 17 of the Administrative Code.

Title A provides for a method of foreclosing for tax delinquencies against individual parcels only. A lien for unpaid taxes on a particular parcel must first be offered for sale at public auction. The purchaser may foreclose if the owner fails to pay interest on the tax lien, or current taxes as they accrue, or the face amount of the tax lien within three years of the date of sale. If the lien is not purchased at the sale, the City may then foreclose against the individual parcel and any surplus resulting from the foreclosure sale is set aside for the owner.

The method of foreclosure under Title A is patterned after that prevailing in a mortgage foreclosure between private parties. It was substantially *in personam* in procedure requiring an examination of title, certification of parties defendant, service of process and all other ramifications of such an action, finally resulting in a judicial sale (Adm. Code, §§415(1)-23.0 et seq.).

The method had proved time-consuming, cumbersome, expensive and outmoded so far as the City was concerned. Many owners of income-producing properties permitted substantial tax arrears to accrue, knowing that as a practical matter the City could do nothing to enforce prompt collection.

By the enactment of the in rem method of tax collection, the Legislature intended to afford the City a summary remedy, unencumbered by the many intricacies of the mortgage foreclosure type of action and eliminating foreclosure sales. This intention is stated unequivocally in §D17-4.0, which provides in part that tax liens "may be summarily foreclosed * * * notwithstanding any omission to hold a tax sale prior to such foreclosure."

The Legislature's intent was made manifest in other ways. A reading of Title D shows that the City was provided with a method of foreclosing tax liens simple in form and procedure, expeditious in operation, inexpensive in cost, summary in nature, and free from all the ramifications of the old-fashioned transfer of tax lien foreclosure action, which include expensive publication of the notice of sale and sales at public auction with attendant referees' and auctioneers' fees.

The choice, therefore, of Title D instead of Title A by the Treasurer of the City of New York as a method of collecting arrears against properties in the Sections where appellants' parcels were located was not capricious but a proper exercise of discretion by which it became mandatory to foreclose all parcels in those Sections delinquent four or more years, regardless of the amount of arrears. The appellants have no constitutional right to insist that the method which the City must adopt for collection is one which has hitherto proved ineffectual. *Wood* v. *Lovell*, 313 U. S. 362, 371 (1941); *League* v. *Texas*, 184 U. S. 156, 158 (1902).

With respect to appellants' contention that the use of Title A would have resulted in a surplus, we point out that Title D makes provision for a separate sale of a particular parcel and provision for a surplus in those instances where an owner of property interposes an answer in an in rem foreclosure sale. Section D17-12.0 (a) provides that in a proper case the Court has the power to direct a separate judicial sale of such lands and to distribute the proceeds of sale. This has been interpreted by the Appellate Division of the Supreme Court of the State of New York in *City of New York* v. *Chapman Docks Company*, 1 A. D. 2d 895, 149 N. Y. Supp. 2d 679

(2nd Dept., 1956), to mean that where an owner of property interposes an answer setting forth a substantial equity in the tax-delinquent parcels, the Court should direct a separate sale pursuant to Section 986 of the Civil Practice Act for the purpose of enabling the owner to receive the surplus proceeds.

The difficulty of appellants in the instant case stems essentially not from any failure of the statute to provide for a surplus sale but from their own failure to file an answer in the foreclosure action after notice thereof was mailed to them and admittedly received by their employee.

4. The in rem foreclosure statute applies to all tax-delinquent real property, improved and unimproved, and has been so construed by the courts of New York.

If this Court entertains the present appeal with respect to the Powell Street property, another contention of appellants requires a brief comment.

The appellants apparently intimate (Brief, pp. 9-10) that the in rem foreclosure statute here involved (Title D, Chapter 17, Admin. Code) was intended to apply only to vacant property and was therefore wrongly used with respect to the Powell Street property, which was an improved parcel. The argument is based on a reference to the legislative history not of the statute here involved but of a similar statute applicable generally throughout the state, *i. e.*, Title 3, Article VII-A, of the Tax Law, enacted by Laws of 1939, Chapter 692. Appellants quote from the Governor's bill jacket for that statute to show that it was "designed to put back on the tax rolls, uninhabited lands and vacant lots."

There are several answers to this contention. In the first place, Title 3, Article VII-A, of the Tax Law contains no provision limiting it to vacant parcels. By its terms it is made applicable to all real property. Moreover, even if Title 3, Article VII-A, were held to be limited to vacant property—an assumption we regard as untenable—it would not follow that Title D, Chapter 17, of the Administrative Code—the statute here involved—was so limited. Title D, Chapter 17, on its face is applicable to all real property and there is no warrant for reading into it an exclusion of improved real estate.

In any event, the inquiry into the merits of this contention need not be pursued further. For the contention was urged by appellants in the New York Court of Appeals and necessarily rejected by reason of the affirmance of the decisions of the lower courts. The interpretation of the state statute by the Court of Appeals is binding on this Court. *Kedroff* v. *St. Nicholas Cathedral,* 344 U. S. 94, 99 (1952); *Winters* v. *New York,* 333 U. S. 507, 514 (1948); *Hebert* v. *Louisiana,* 272 U. S. 312, 317 (1926); *Knights of Pythias* v. *Meyer,* 265 U. S. 30, 32-33 (1924).

CONCLUSION

The order appealed from should be affirmed insofar as it relates to the 45th Avenue property. The appeal should be dismissed as moot insofar as it relates to the Powell Street property or, in the alternative, the order should also be affirmed as to that property.

November 2, 1956

Respectfully submitted,

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APPENDIX

Laws of 1956, Chapter 481

Section 1. The administrative code of the city of New York is hereby amended by adding a new section thereto, to be section D17-25.0, to read as follows:

§ D17-25.0 Application for conveyance from the city of its right and interest to certain lands, real estate or real property acquired in foreclosure actions in rem.

a. The board of estimate, in its discretion, may grant, convey and release all of the property, right, title and interest of the city in any lands, real estate or real property heretofore or hereafter acquired by the city by virtue of any action in rem brought pursuant to the provisions of this title to any person, association or corporation which, on the date of the filing of the list of delinquent taxes in such action, had been vested with title thereto, provided, however, that no grant, conveyance or release may be made of any such lands, real estate or real property or any portion thereof which the board has assigned to any agency of the city, and provided further that the grantee by such grant, conveyance and release shall receive thereby the title which was vested in the owner on the date of the filing of the list of delinquent taxes, subject to any and all liens, encumbrances and defects which existed on said date except in this section otherwise provided, including the lien or encumbrance, if any, of the applicant.

b. Such person, association or corporation shall apply in writing to the board of estimate for such grant, conveyance or release within four months after the date of such

acquisition by the city, and excepting that such application may be made within two months from the effective date hereof where such lands, real estate or real property were acquired by the city pursuant to this title prior to such effective date, providing the city has not sold or agreed to convey the lands, real estate or real property involved to a successful bidder nor assigned the same to any agency of the city. Any person, association or corporation which, on the date of the filing of the list of delinquent taxes in an action in rem brought pursuant to the provisions of this title, had a lien or encumbrance of record or pursuant to a policy or written agreement of insurance enuring to the benefit of an owner of the title, lien or encumbrance, entered into prior to the commencement of an action to foreclose brought pursuant to this title, shall have the same right as the owner, within the same period of time herein set forth, to apply to the board for such grant, conveyance or release, excepting that no such application shall be considered by the board until the full period of time of the owner to make application shall have expired and the owner shall have failed to make such application. After the effective date hereof and during the periods of time provided in this subdivision the city shall not sell such lands, real estate or real property to any person, association or corporation other than one entitled to apply for a grant, conveyance or release as herein provided, but this prohibition shall not operate or be construed to deny to the board of estimate the right within such periods of time to assign such lands, real estate or real property to any agency of the city. Any application made pursuant to

the provisions of this section shall contain a statement of the identity and interest of the applicant and that the applicant has not accepted or agreed to accept any consideration or other assistance for making this application in return for his promise or agreement to convey, transfer or assign his right, title and interest in the lands, real estate or real property subsequently to be conveyed to him by the city pursuant to this section. Such application shall be verified and where made by the owner, lienor or encumbrancer of record of or against the lands, real estate and real property sought to be granted, conveyed or released shall be accompanied by the duly written certificate or certified search of the city register, county clerk or clerk of any surrogate's or other court of record, or by the duly written certificate or certified search of any title insurance, abstract or searching company, organized and doing business under the laws of this state, attesting that the applicant for such grant, conveyance or release was on the date of the filing of the list of delinquent taxes such owner, lienor or encumbrancer of record. In the event that the the estate, lien or interest of the applicant shall have been derived by reason of the death of the owner, lienor or encumbrancer of record of or against such lands, real estate and real property on the date of the filing of the list of delinquent taxes, and such derived estate, lien or interest of the applicant shall not appear of record, proof of such facts as shall be sufficient to attest to the derivation of such estate, lien or interest shall be made by affidavit of the applicant and other persons having information with relation thereto. The board of estimate may from time to

time prescribe additional requirements to be inserted in the application which are not inconsistent with the provisions of this section. Such certificates, searches and affidavits shall be transmitted by the board to the corporation counsel who shall examine them and report to the board upon the sufficiency of such documents to comply with the provisions of this section. The board of estimate shall cause to be prepared and delivered to such applicant a grant, conveyance or release of the right, title and interest of the city in and to such lands, real estate or real property provided only that the title which the applicant shall receive thereby shall not be free from any and all liens, encumbrances and defects which existed on the date of the filing of the list of delinquent taxes, and upon the delivery of such grant, conveyance or release such liens, encumbrances or defects including the lien or encumbrance, if any, of the applicant shall thereupon reattach. Such grant, conveyance or release shall be in such form as the corporation counsel shall approve.

c. Such grant, conveyance or release shall be delivered to the applicant upon the payment as to each separate parcel so conveyed of the following sums of money:

1. The principal amount due on all delinquent tax liens appearing on the list of delinquent taxes upon which the judgment of foreclosure was based with interest at the rates appearing on the said list to the date of payment.

2. The principal amount due on all unpaid taxes, assessments, sewer rents and water rents which accrued and became liens on a date or dates subsequent

to the date or dates on which the delinquent tax liens appearing on the list of delinquent taxes accrued and became liens with interest at the rate or rates provided by law.

3. A sum which shall be equal in the aggregate to the amounts of costs awarded by the provisions of sections fifteen hundred four-a, subdivision one, fifteen hundred twelve and fifteen hundred twelve-a of the civil practice act, together with an additional sum not exceeding three hundred dollars equal to two and one-half percentum upon the total of the amounts due pursuant to paragraphs one and two of this subdivision. The total amount shall be paid pursuant to this paragraph for each separate parcel conveyed shall not exceed the sum of five hundred and five dollars.

4. Any deficiency which may result to the city after all payments made by it for the repair, maintenance, and operation of the lands, real estate and real property shall have been charged or debited in the appropriate accounts of the city and all rents, license fees and other moneys collected by the city as a result of its operation of the said lands, real estate and real property shall have been credited in such accounts. Any contract for repair, maintenance, management or operation made by the city on which it shall be liable, although payment thereon shall not have been made, shall be deemed a charge or debit to such accounts as though payment had been made. The amounts paid and collected by the city as shown in its accounts and

the necessity for making the several payments and contracts to be charged as herein provided shall be conclusive upon the applicant.

5. Any and all costs and disbursements which shall have been awarded to the city or to which it may have become entitled by operation of law or which it may have paid or become liable for payment in connection with any litigation between it and the applicant or any person having an estate or interest in the lands, real estate and real property to be conveyed resulting directly or indirectly from the foreclosure by action in rem of the delinquent taxes affecting lands, real estate or real property.

Any and all rents, license fees and other moneys due and owing to the city which, on the date of the making of such grant, conveyance or release shall not have been collected by it, and the right to collect and bring actions to collect the same shall be assigned, transferred and set over to the applicant by an instrument in writing.

d. A person who, in the promotion of his own interests or to derive pecuniary benefit, gain or profit, for himself or for any person, association or corporation, shall solicit, induce, or agree to cause, or cause any other person, association or corporation to apply for a grant, conveyance or release pursuant to this section and gives or promises to give such applicant any consideration or other assistance in return for the applicant's promise or agreement to convey, transfer or assign the right, title and interest in the lands, real estate or real property subsequently to be conveyed to such applicant by the City pursuant to this sec-

tion, or a person, officer or director of an association or corporation, who, being entitled to apply for a grant, conveyance or release pursuant to this section, in return for a consideration or other assistance by or accepted from another person, association or corporation not entitled to so apply, agrees to make such application and promises, or in any way binds himself to sell, transfer or assign his right, title and interest in the lands, real estate or real property subsequently to be conveyed to him by the City pusuant to this section, is guilty of a misdemeanor.

e. The right to apply for a grant, conveyance or release granted by this section except for the rights provided by section three hundred eighty four of the charter, shall be the exclusive method by which any person, association or corporation which by this section shall be entitled to make application may secure a grant, conveyance or release of such lands, real estate and real property.

§2. This act shall take effect immediately.